the injury suffered was as a result of the leg coming between two hard objects consistent with the plaintiff's and PW2's evidence that the rear of the lorry had knocked against this unknown motor-car.

For reasons which I have stated, it is my considered judgment that DW1 was solely to blame. I therefore entered judgment for the plaintiff and awarded a sum of $450 special damages as agreed.

As for general damages, I have taken into consideration the cases which have been cited to me by counsel for the plaintiff and in particular I have borne in mind that the plaintiff suffered from severe compound fracture of his left leg as a result of this crush injury and that he had to undergo prolonged treatment. Dr. Balasubramaniam in his report is further of the opinion that the crush injury has also damaged the blood supply of his left leg "and he now has a Volkmann's ischaemic contracture of left leg and foot. As a result of this injury to the blood supply, the muscles of left leg and foot had necrosed (dead) and became fibrotic. The extensive scarring of the muscles of left leg and foot has produced the deformity of left ankle and foot (equinus-cavus deformity). The fracture of left tibia has united in malposition, causing a 40° external rotation deformity of the leg. It has also produced ¾ inch shortening of the left leg. The shortening of the left leg is permanent. The Volkmann's ischaemic contracture of his left leg and foot is permanent. The dead muscles of his left leg and foot will not recover. The equino-cavus deformity of his left foot could be corrected surgically."

In the light of the permanent injury suffered by the plaintiff, it is highly unlikely that the plaintiff will be able to secure any employment. According to the plaintiff it still hurts if he were to put his leg on the ground.

In the circumstances, it is my view that $23,000 would be a fair compensation for pain and suffering and loss of amenities. As for loss of earnings, I calculated it at an average loss of $100 per month. At the date of hearing the plaintiff was 48 years old and on the basis of 7 years' purchase, I assess loss of future earnings at $7,000.

The total award for special and general damages is $30,450 and out of this sum, it is agreed that $5,143.68 paid under the Workmen's Compensation Ordinance be deducted.

Costs to the plaintiff.

Claim allowed.

Solicitors: *Devadason & Co.; Rithaudeen & Aziz.*

GOH KOK LAY v. HOR SIAK & ANOR.

[O.C.J. (Suffian F.J.) March 4, 1972]

[Kuala Lumpur — Raub Civil Suit No. 34 of 1968]

Damages — Fracture of occipital bone — Diminution of sense of smell — Recurrent headaches — General damages.

The plaintiff, aged 24, a lorry attendant, earning $200 monthly salary, was riding in a lorry driven by the first defendant, when it over-turned. As a result of the accident he suffered a fracture of the occipital bone, a diminution of his sense of smell, and a tendency to get recurrent headaches when working in the sun, and this prevented him from working long hours continuously.

He sued the first defendant as well as the second defendant, their common employer, for damages for injuries suffered by him. Liability was admitted, and special damages were agreed at $150. On the question of general damages,

Held: an award of $7,500 as general damages was considered a fair amount.

Cases referred to:-

(1) *Low Hork Guan* v. *William Drylie Gray* [1968] 2 M.L.J. xxii.

(2) *Woon Joke Buay* v. *Chan Eng Kian* [1968] 1 M.L.J. xliii.

SUIT.

Inderjit Singh for the plaintiff.

Kam Woon Wah for the defendants.

Suffian F.J.: The plaintiff, a lorry attendant, was on 8th February, 1968, riding in a lorry driven by the first defendant from the direction of Bentong when it overturned near Bukit Tinggi on the mountain road towards Kuala Lumpur. The plaintiff sued the first defendant as well as the second defendant, their common employer, for damages for injuries suffered by him. Liability is admitted and $150 special damages are agreed and the only question for my determination is the quantum of general damages.

The relevant facts as I find them are as follows.

The plaintiff was on the day of the accident admitted into the District Hospital, Bentong, where he stayed for five days after which he was transferred to the General Hospital at Kuala Lumpur where he stayed from 13th until 26th February, 1968. So he was hospitalised 19 days in all.

At the General Hospital in Kuala Lumpur he was referred to the neurosurgical unit on 16th February, 1968. They found him in coma II, meaning he was conscious but somewhat lethargic, but he responded to verbal commands. His pupils were equal and reactive and he was able to move all four limbs. He had no neurological deficit, meaning he was free from any evidence of increased intracranial pressure from blood clots. An X-ray of the skull showed fracture of the occipital bone.

On 3rd July, 1968, he was again seen by the neurological unit. He was found to be well, except that he complained of headache whenever he went out in the sun.

Dr. A. Mohandas of the neurosurgical unit at the Kuala Lumpur General Hospital (PW1) examined him

for the first time on 19th January, 1972, no doubt in connection with this case and found him a well-built and rational man. The plaintiff complained to Dr. Mohandas of a permanent type of headache which got worse when working in the sun and said that he felt a lot better in an air-conditioned room and that he had a tendency to forget recent events. The doctor said that the plaintiff's headache was a subjective complaint which was difficult to verify, but the fact (which the doctor found) that the plaintiff could not smell well indicated that the complaint might well be genuine, and I find as a fact that this complaint is genuine, namely, that the plaintiff as a result of the accident suffers from recurring headaches, particularly when he is out in the sun.

At the time of the accident the plaintiff was 24 and had been working as a lorry attendant for the second defendant for about a year at a salary of $200 a month. At that time he had no driving licence and could not drive, but about two years ago to better his employment prospects he obtained a driving licence but was unable to get a permanent job either as a lorry attendant or driver because his recurring headaches prevented him from working long hours continuously. He goes hunting occasionally with friends in Raub but does not take an active part, and being a trumpet-blower also tries to play in a band but apparently not successfully.

Counsel for the plaintiff (citing no reported decisions) submits that the plaintiff should get general damages of $14,000, but counsel for the defendants submits that the plaintiff should get only $3,000 and he cites notes of two cases *Low Hork Guan*[1] and *Woon Joke Buay*.[2]

Taking into account the fact that the plaintiff had a fracture of the occipital bone, has suffered a diminution of his sense of smell, that he has lost a $200 a month job, that he tends to get a headache when he goes out in the sun, that this makes it difficult for him to work long hours continuously and therefore to obtain a permanent job and the fact that he is otherwise sound in mind and limb and is not therefore prevented from pursuing other, especially indoor, occupations, I am of the opinion that $7,500 would be a fair amount to award him by way of general damages, and I hereby order accordingly.

I also award him $150 agreed special damages.

I also award the plaintiff costs of this trial.

Judgment for the plaintiff.

Solicitors: *Inderjit Singh; Kam Woon Wah & Co.*

RAMOO & ANOR. v. PUBLIC PROSECUTOR

[A.Cr.J. (Sharma J.) March 6, 1972]

[Ipoh — Perak Criminal Appeal No. 9 of 1972]

Road Traffic — Licence — Non-compliance with conditions — Weight — Presumption — Certificate of accuracy — Road Traffic Ordinance, 1958, ss. 120(2) and 143(7).

The appellants were convicted of an offence under section 120(2) of the Road Traffic Ordinance. It was alleged that the first appellant, in breach of the condition of a licence, carried a load of 23 tons 15 cwts. instead of the maximum permissible laden weight of 360 cwts., and that the second appellant permitted the use of the vehicle with the said excess weight.

A certificate of accuracy in respect of the weigh-bridge was issued on December 7, 1970, the validity and effect of which lasted for a period of 8 months from the date of examination. However, on the prosecution's own evidence there was a breakdown of the weigh-bridge on March 24, 1971. The appellants were alleged to have committed the offence on March 30, 1971. The next certificate was not issued until July 12, 1971.

Held, allowing the appeal: there was nothing in the prosecution case to establish the charge against the appellants apart from the presumption which arose under section 143(7) of the Road Traffic Ordinance. However, since the validity and effectiveness of the certificate issued on December 7, 1970, did not hold good until a fresh certificate was issued, the presumption was not applicable in the present case as there was no valid and effective certificate of accuracy in existence.

MAGISTRATE'S CRIMINAL APPEAL.

Ng Chee Kong (*Chin Fook Yen* with him) for the appellants.

Haidar bin Mohamed Noor (Deputy Public Prosecutor) for the respondent.

Sharma J.: The appellants were convicted of an offence under section 120(2) of the Road Traffic Ordinance in that the first appellant in breach of the condition of the licence carried a load of 23 tons 15 cwts instead of the maximum permissible laden weight of only 360 cwts and that the second appellant permitted the use of the vehicle with the said excess weight. A presumption arises under section 143(7) that the weight recorded by the weigh-bridge or the weighing machine is accurate if there is a certificate issued by a public servant in charge of the weigh-bridge or the weighing machine (in this case the Inspector of Weights and Measures) that the weigh-bridge was examined by him and found to be accurate. The validity and effect of the certificate lasts for a period of 8 months from the date of the examination. The presumption under section 143(7) is only a rebuttable presumption. In the present case the weigh-bridge was examined by the Inspector of Weights and Measures on the 7th December, 1970 and a certificate of accuracy issued on that date. There was, however, on the prosecution's own evidence a breakdown of the weigh-bridge on the 24th March, 1971. The weigh-bridge having broken down, the validity and effectiveness of the certificate issued on the 7th December, 1970 did not hold good until a fresh certificate was issued if the prosecution was to rely upon any presumption under section 143(7) of the Road Traffic Ordinance. The next certificate however was not issued until the 12th July, 1971 by the Inspector of Weights and Measures. The effect of this is that the prosecution could not rely upon the presumption under section 143(7) between the 24th March, 1971 and the 12th July, 1971.